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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re the Matter of)

Review of the Prime Time)
Access Rule, Section 73.658(k))
of the Commission's Rules)

MM Docket No. 94-123

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**MOTION FOR AN ORDER REQUIRING COMMENTERS TO
SERVE ON OTHER COMMENTERS ALL DATA RELIED ON
IN ANY ECONOMIC ANALYSIS THEY SUBMIT TO THE COMMISSION**

Pursuant to 47 C.F.R. § 1.41, The Coalition to Enhance Diversity ("Coalition"), on its own behalf and on behalf of its members, respectfully requests that the Commission issue an order in this proceeding as follows:

1. Any commenter who wishes to receive from other commenters who submit economic analyses (a) the underlying data, and (b) copies of the materials from which such data is derived, should so notify the Commission in writing.

2. Any commenter submitting an economic analysis shall file with the Commission, and serve on all commenters who have notified the Commission pursuant to Paragraph 1, (a) all data relied on in the economic analysis, and (b) a copy of the materials from which such data is derived.

3. Such data and materials shall be filed with the Commission and served on other parties concurrently with the

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filing of comments that rely on such data and materials, unless such data and materials have been previously filed and served.

4. Any data or databases shall be filed and served in a machine readable format.

In its Notice of Proposed Rulemaking that initiated these proceedings, the Commission requested that interested parties provide "economic and other data and analysis that would assist our analysis" ¹ The Coalition anticipates that a number of parties will respond to the Commission's request and that some will provide the Commission with data and economic analyses derived from large data sets. For example, to support their motion for an extension of time, the Association of Independent Television Stations, Inc., Viacom, Inc., and King World Productions, Inc. attached a letter from an economic consultant who stated that he was in the process of developing "extensive empirical databases to examine the effects of PTAR." ²

If the Commission is to have a complete record on which to base its decision, it is critical that any empirical evidence submitted by commenters be subject to independent

1 Review of the Prime Time Access Rule, FCC 94-266, at 3 (released October 25, 1994).

2 Letter from J. Clifton of Law & Economics Consulting Group, Inc. to Reed Hundt (Nov. 28, 1994), attached to "Joint Motion for Extension of Time" (Nov. 29, 1994).

review and testing.³ A Commission order requiring the production of data and materials from which such data is derived will permit such review, and simultaneously conserve the time and resources of the parties and the Commission alike.⁴ Such an order will enable the parties and the Commission to avoid unnecessary duplication of effort in replicating databases and statistical analyses, and will ensure that all commenters are able to perform a thorough review and testing of such analyses without causing unnecessary delay in the filing of reply comments.⁵ Requiring the data to be filed

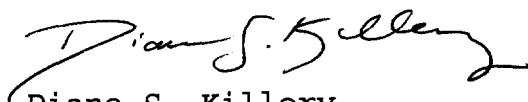
3 Indeed, the Commission has in the past recognized the importance of such independent review of empirical evidence. See, e.g., 800 Data Base Access Tariffs, 8 FCC Rcd 5132, 5135-36 (1993) (ordering LECs to disclose on record any computer models used to develop costs); National Exchange Carrier Association, Inc. Proposed Modifications to the Interstate Average Schedules, 9 FCC Rcd 3266, 3267 (1994) (warning NECA to refile underlying data in future filings because "[i]nterested parties should not have to do historical research [into underlying data]" and noting that "NECA's filing approach . . . tends to make its statistical methodologies unnecessarily opaque, thereby causing commenting parties to expend needless effort in attempting to understand NECA's statistical techniques").

4 Indeed, it is for these reasons that the provision of data and related workpapers is standard in other agency proceedings in which detailed economic analyses are submitted, e.g., Federal Energy Regulatory Commission proceedings. See also Price Cap Performance Review for Local Exchange Carriers, 9 FCC Rcd 2748 (1994) (noting that USTA voluntarily provided supporting economic data in response to such a request by another party). In addition, litigants in federal district court are now required to disclose to other parties "data or other information considered" by an expert witness. Fed. R. Civ. P. 26(a)(2)(B).

5 The parties requesting and supporting the extension of time have told the Commission that it will take four months (Footnote 5 Continued)

and served in machine readable format will further conserve the time and resources of the parties and the Commission.⁶ The requested order will also ensure the Commission that it has the benefit of the most complete and detailed economic analysis the commenters can provide. For these reasons, we respectfully urge the Commission to grant such an order.

Respectfully submitted,



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(Footnote 5 Continued)

to gather and analyze the data. In an order issued last week, the Commission granted the requested extension. Review of the Prime Time Access Rule, DA 94-1408 (released Dec. 8, 1994). Unless the Commission grants this Motion, the Commission may well later be faced with requests for a four-month reply period, causing an unacceptable delay in resolving this proceeding.

6 The Commission has in the past required data submissions to be in machine readable format. See Common Carrier Bureau Establishes Data Base for Public Use in the Price Cap Performance Review, 9 FCC Rcd 1390 (1994) (requiring submissions on diskette).

CERTIFICATE OF SERVICE

I, Susan H. Crandall, do hereby certify that true copies of the foregoing **MOTION FOR AN ORDER REQUIRING COMMENTERS TO SERVE ON OTHER COMMENTERS ALL DATA RELIED ON IN ANY ECONOMIC ANALYSIS THEY SUBMIT TO THE COMMISSION** were hand delivered, unless otherwise indicated below, to the following individuals on this 13th day of December, 1994:

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